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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,500	12/12/2003	Demetrius Bagley	02700-0711	1614
24504	7590	10/19/2006	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948			POUS, NATALIE R	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,500

Applicant(s)

BAGLEY ET AL.

Examiner

Natalie Pous

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18,23,24 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 18,23,24 and 33-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3-3-06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 18, 23 and 24 have been considered but are moot in view of the new ground(s) of rejection.

Upon receipt of a terminal disclaimer, the previous obvious-type double patenting rejection is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 18, 23, 35, 36, 37, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Utsugi (US 4198960) in view of Rydell (US 5163942).

Utsugi teaches a retrieval device comprising: a three-dimensional basket (35) having at least three legs (33), each leg having a forward end that is coupled at a junction (34) of the basket; such that the junction of the basket is displaced rearward (fig. 7) and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object (Column 4, proximate lines 37-43).

Utsugi fails to teach

- a first actuator configured to extend a first and a second leg and to simultaneously retract a third leg of the basket.
- First and second operating members

Rydell teaches a device comprising a first actuator (145) configured to extend one portion of the loop (128) and simultaneously retract a second portion of the loop (fig. 8), wherein the ends are attached to first and second operating members (204, 206), actuated by wheel (146) in order to rotate the midpoint of the loop and thus reorient the ends of the loop to easily manipulate an object held by the device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Utsugi by attaching a first and second legs to one operating member and a third leg to another operating member of Rydell in order to rotate the midpoint of the device and thus reorient the legs and easily manipulate the device.

The combination of Utsugi and Rydell further teaches First and second operating members, each operating member having a rearward end that is coupled to the first actuator and each operating member having a forward member that is coupled to at least one leg of the basket, a first operating member being coupled to the first and

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second legs of the basket and a second operating member coupled to the third leg of the basket and wherein the first actuator is configured to extend the first operating member while simultaneously retracting the second operating member (Rydell fig. 4) such that the first and second legs of the basket are extended and the third leg is simultaneously retracted and the junction of the basket is displaced (Utsugi fig. 7).

A sheath (Rydell 124), wherein the operating members (Rydell, portions of 202 connected to actuator) extend along an axis of the sheath, the basket (Utsugi 34) being coupled to the operating members at a forward end of the sheath (Rydell 124) and the actuators (Rydell, 212) being coupled to the operating members at a rearward end of the sheath (Rydell fig. 8)

The second actuator (Rydell 134) configured to simultaneously extend or retract both operating members such that manipulation of the second actuator causes the legs (Utsugi 33) to either extend from the sheath and resiliently spring away from each other to open the basket (Utsugi fig. 7) or retract into the sheath to close the basket (Rydell, Column 4, proximate lines 42-49).

Conversely, Claims 23, 24, 37,38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydell (US 5163942) in view of Utsugi (US 4198960).

Rydell teaches a retrieval device comprising:

- a three-dimensional basket (128), and a first actuator (146) configured to extend a first end, and to simultaneously retract another end of the basket, such that the midpoint of the basket is displaced rearward (fig. 8)
- Wherein the first actuator comprises a wheel (146)

- A second actuator (132) configured to simultaneously extend or retract the legs of the basket such that the basket translates forward or rearward depending on the direction of manipulation of the second actuator
- Wherein the second actuator comprises a slide (132)

Rydell fails to teach the basket having at least three legs, each leg having a forward end that is coupled at a junction of the basket; wherein the device is configured to extend a first and a second leg and to simultaneously retract a third leg of the basket and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object.

Utsugi teaches a retrieval device with a basket (35) having at least three legs (33), each leg having a forward end that is coupled at a junction (34) of the basket; wherein the device is configured to extend a first and a second leg and to simultaneously retract a third leg of the basket and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object (fig. 7) in order to aid in trapping an object. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Rydell as taught by Utsugi in order to aid in trapping an object.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Utsugi and Rydell as applied to claim 23 above, and further in view of McClellan et al. (US 2002/0019594). The combination of Utsugi and Rydell teach all limitations of preceding dependent claim 23, but fails to teach wherein the legs are formed of shape memory material. McClellan teaches a surgical retrieval device

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wherein the legs are formed of shape memory material in order to aid in releasing the basket from its radially restrained configuration for insertion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Utsugi and Rydell with shaper memory material in order to aid in releasing the basket from its radially restrained configuration for insertion.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Utsugi and Rydell as applied to claim 23 above, and further in view of Bates et al. (US 6527781). The combination of Utsugi and Rydell teaches all limitations of preceding dependent claim 23, but fails to teach wherein the junction comprises a tip member having a hole, each leg being secured to the tip member by inserting the forward end of the leg into the hole and crimping the tip member. Bates teaches a medical retrieval device comprising a three dimensional basket formed of legs joined at a junction (cap) by soldering, gluing or any means known in the art in order to provide an atraumatic wire basket. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Utsugi and Rydell to provide the junction of Bates in order to provide an atraumatic wire basket.

Conclusion

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie Pous whose telephone number is (571) 272-6140. The examiner can normally be reached on Monday-Friday 8:00am-5:30pm, off every 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NRP
10/5/06


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
10/16/06